

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
 )  
Z-TEL COMMUNICATIONS, INC. )  
 )  
For Authority to Provide )  
Security in Connection with New )  
Financing For Its Parent. )  
\_\_\_\_\_ )

DOCKET NO. 04-0200

DECISION AND ORDER NO. 21472

DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

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At 1 o'clock P.M.

Charles K. Kane  
for Chief Clerk of the Commission

ATTEST: A True Copy  
KAREN HIGASHI

for Chief Clerk, Public Utilities  
Commission, State of Hawaii.

Charles K. Kane

OF THE STATE OF HAWAII

Z-TEL COMMUNICATIONS, INC.

Decision and Order No. **21472**

For Authority to Provide  
Security in Connection with New  
Financing for its Parent.

I.

Z-TEL COMMUNICATIONS, INC. ("Z-Tel"), requests commission approval, to the extent it may be necessary, to guarantee and provide a security interest in its assets in connection with indebtedness to be incurred by Z-Tel's parent, Z-Tel Technologies, Inc. ("Proposed Financial Transaction"), pursuant to Hawaii Revised Statutes ("HRS") §§ 269-17 and 269-19.<sup>1</sup> Moreover, to the extent that Z-Tel did not satisfy the applicable application or petition requirements, Z-Tel also requests a waiver of such requirements, pursuant to HRS § 269-16.9.

<sup>1</sup>Z-Tel's petition filed on August 11, 2004 ("Petition").

of Position, filed on November 3, 2004, states that it neither objects to the Proposed Financial Transaction nor objects to the waiver of the applicable application or petition requirements.

## II.

### Background

#### A.

##### Description of Z-Tel

Z-Tel is a Delaware corporation and a wholly-owned direct subsidiary of Z-Tel Technologies, Inc. ("Parent"), a publicly held corporation. Z-Tel is presently authorized to provide long distance telecommunications services nationwide, and competitive local exchange services in 48 states including the State of Hawaii ("State").<sup>2</sup>

#### B.

##### Proposed Financial Transaction

The Proposed Financial Transaction involves Z-Tel's plan to guarantee additional indebtedness to be incurred by the Parent. This new indebtedness will be evidenced by notes of the Parent that will be subordinate to certain existing

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<sup>2</sup>Z-Tel is authorized to provide intrastate telecommunications services in the State as a reseller and a facilities-based carrier. See Decision and Order No. 19318, filed on April 19, 2002, in Docket No. 01-0428; Decision and Order No. 16961, filed on April 29, 1999, in Docket No. 99-0047.

indebtedness.<sup>3</sup> In addition to providing guarantees, Z-Tel may also provide a security interest in its assets to the extent permitted by the terms of then existing indebtedness. The anticipated terms of the Proposed Financial Transaction are as follows:

1. *Lender:* One or more banks, financial institutions or public or private funds. The Parent currently is negotiating with one of its existing lenders, The 1818 Fund III, L.P. ("The Fund"). The Fund is one of a family of private equity partnerships formed by Brown Brothers Harriman & Company ("BBH"), which serves as the general partner of the Fund. BBH is the country's largest partnership bank and one of its oldest owner-managed investment partnerships. The Fund and its sister funds have been organized to take substantial, non-controlling long term ownership positions in growing companies.
2. *Amount:* Up to \$50 million.
3. *Maturity:* From one (1) to seven (7) years depending on the amount, interest rates and market conditions, including inflation and interest rate forecasts.
4. *Interest:* Interest likely will be based on the Prime Rate or London Interbank Offered Rate, aka LIBOR, plus an applicable margin reflecting the companies' financial condition and market credit conditions. Current negotiations contemplate an interest rate of approximately ten per cent (10%) for a loan of relatively short maturity.
5. *Security:* Z-Tel likely will be required to provide its guaranty as security for the loans and may pledge its assets to the extent permitted by existing indebtedness.
6. *Use of Proceeds:* It is intended that the net proceeds of the financing will be used for general corporate purposes and capital expenditures relating substantially to the establishment of Z-Tel's planned network.

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<sup>3</sup>See, Decision and Order No. 20980, filed on May 14, 2004, in Docket No. 04-0059.

Z-Tel represents that approval of the Petition (1) "will serve the public interest by enhancing the ability of Z-Tel to grow and compete in the highly competitive markets for telecommunications services in Hawaii and nationwide[;]" and (2) "is not expected to directly affect in any way the rates or services of Z-Tel or its affiliates, or result in any change in control of Parent or of Z-Tel[.]" Z-Tel further states that the consummation of the Proposed Financial Transaction "will provide Z-Tel with the financial resources needed to continue to produce new products and services and respond to the highly competitive telecommunications environment."

C.

Consumer Advocate's Position

The Consumer Advocate states that it does not object to Z-Tel's request "to guarantee and provide a security interest in its assets in connection with the [Proposed Financial Transaction] for [the Parent]." In addition, the Consumer Advocate states that "it does not object to a waiver of the HAR § 6-61-101 filing requirements."

In its Statement of Position, the Consumer Advocate further mentions that it recognizes that "the entry of many telecommunications service providers in the Hawaii market" will "serve to mitigate any traditional public utility regulatory concerns" regarding the Proposed Financial Transaction. Therefore, if there are any adverse consequences from the

Proposed Financial Transaction, "consumers in Hawaii will have the option of selecting another service provider."

### III.

#### Discussion

HRS § 269-17 requires a public utility to obtain the commission's approval before issuing stocks and stock certificates, bonds, notes, and other evidences of indebtedness payable at periods of more than twelve (12) months. This section permits the proceeds of such debt to be used only for the acquisition of property or for the construction, completion, extension, or improvement of or addition to the utility's facilities or service, or for the discharge or refunding of its obligations or reimbursement of funds expending for the foregoing described purposes. We may approve the issuance of debt obligations if we find that such an issuance will not have a material adverse effect on the public utility's operations.

HRS § 269-19 requires a public utility corporation to obtain our consent prior to, among other things, mortgaging, encumbering, or otherwise disposing of its property. The purpose of this provision "is to safeguard the public interest." *In re Honolulu Rapid Transit Co.*, 54 Haw. 402, 409, 507 P.2d 755, 759 (1973).

Upon a review of the record,<sup>4</sup> particularly Z-Tel's representations, we find that the Proposed Financial Transaction falls under the purview of HRS §§ 269-17 and 269-19. However, we find, at this time, that the telecommunications services currently provided by Z-Tel are fully competitive, and that Z-Tel is a non-dominant carrier in Hawaii. We also find that the Proposed Financial Transaction is consistent with the public interest, and that competition, in this instance, will serve the same purpose as public interest regulation. Thus, the commission concludes that the applicable requirements of HRS §§ 269-17 and 269-19 should be waived with regards to the matters in this docket.<sup>5</sup> Similarly, based on the same findings and conclusions stated above, we will also waive the provisions of HAR §§ 6-61-101 and 6-61-105, to the extent that Z-Tel's petition fails to meet any of these filing requirements.

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<sup>4</sup> The commission also takes official notice, pursuant to HAR § 6-61-48, of any other commission records relating to Z-Tel.

<sup>5</sup> The commission will continue to examine each application or petition and make determinations on a case-by-case basis as to whether the applicable requirements of HRS §§ 269-17 and 269-19 should be waived. The commission's determination, in the instant case, of the applicability of HRS §§ 269-17 and 269-19 is based on our review of Z-Tel's instant Petition only. Thus, our waiver in this instance of the applicability of HRS §§ 269-17 and 269-19 should not be construed by any public utility, including Z-Tel, as a basis for not filing an application or petition regarding similar transactions that fall within the purview of these statutes.

IV.

Orders

THE COMMISSION ORDERS:


1. The provisions of HRS §§ 269-17 and 269-19, to the extent applicable, are waived with respect to the Proposed Financial Transaction, described in Z-Tel's petition, filed on August 11, 2004.

2. The filing requirements of HAR §§ 6-61-101 and 6-61-105, to the extent applicable, are waived.

DONE at Honolulu, Hawaii NOV 24 2004.

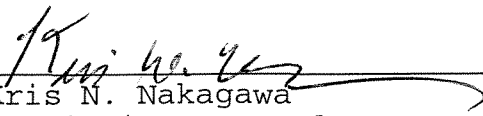
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
Wayne H. Kimura, Commissioner

By   
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

  
Kris N. Nakagawa  
Commission Counsel  
04-0200.cc



CERTIFICATE OF SERVICE

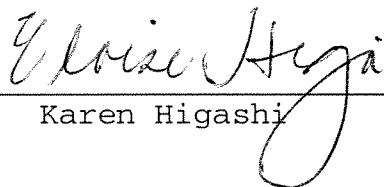
I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21472 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: NOV 24 2004